

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jacqueline Asencio	Team: Team # 1	CCRB Case #: 200901903	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 02/06/2009 11:10 PM	Location of Incident: Wilson and Willoughby Avenues	Precinct: 83	18 Mo. SOL 8/6/2010	EO SOL 8/6/2010	
Date/Time CV Reported Sat, 02/07/2009 8:15 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sat, 02/07/2009 8:15 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Javier Velez	24737	935924	083 PCT
2. POM James Lukeson	09696	935216	083 PCT
3. SGT Gary Calhoun	00622	903537	083 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Kenneth Dwyer	23759	923793	083 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM James Lukeson	Discourtesy: PO James Lukeson spoke obscenely and/or rudely to § 87(2)(b)	
B.SGT Gary Calhoun	Abuse: Sgt. Gary Calhoun supervised the vehicle stop in which § 87(2)(b) and § 87(2)(b) were occupants.	
C.SGT Gary Calhoun	Abuse: Sgt. Gary Calhoun supervised the frisk of § 87(2)(b) and § 87(2)(b)	
D.SGT Gary Calhoun	Abuse: Sgt. Gary Calhoun supervised the search of § 87(2)(b) and § 87(2)(b)	
E.POM Javier Velez	Force: PO Javier Velez used physical force against § 87(2)(b)	
F.SGT Gary Calhoun	Abuse: Sgt. Gary Calhoun supervised the search of the car in which § 87(2)(b) was an occupant.	
G.POM James Lukeson	Abuse: PO James Lukeson refused to provide his name to § 87(2)(b)	

## Synopsis

§ 87(2)(b) and § 87(2)(b) filed this complaint with the CCRB via the call processing system on February 7, 2009. § 87(2)(b) was not present for this incident. On February 6, 2009, at approximately 11:10pm, § 87(2)(b) was driving his mother's 1999 white Buick with his fiancée, § 87(2)(b) and his two cousins, § 87(2)(b) and § 87(2)(b). § 87(2)(b) stopped at a red light at Wilson Avenue and Willoughby Avenue in Brooklyn when an unmarked police vehicle (license plate number § 87(2)(e), § 87(2)(b)) pulled up in front of the Buick. When the light turned green, the unmarked police vehicle made a U-turn onto the opposite lane of traffic as § 87(2)(b) approached the car. As the driver of the unmarked police vehicle, later identified as PO James Lukeson from the 83<sup>rd</sup> Precinct, made the U-turn, he allegedly called § 87(2)(b) a "fucking retard" (**Allegation A**). § 87(2)(b) proceeded to stop his vehicle and waited for the driver to pull away. At that point, § 87(2)(b) told PO Lukeson, "Your mother is a fucking retard. Who the hell would make a retarded U-turn like that?"

At that point, PO Lukeson placed the unmarked police vehicle in reverse, stopped the car, and exited the vehicle along with PO Javier Velez and Sgt. Gary Calhoun, both from the 83<sup>rd</sup> Precinct. PO Lukeson instructed § 87(2)(b) § 87(2)(b) and § 87(2)(b) to exit the vehicle (**Allegation B**). Once § 87(2)(b) exited the vehicle, PO Lukeson allegedly frisked and searched him (**Allegation C**). PO Velez walked to the passenger side of the Buick and allegedly searched § 87(2)(b) (**Allegation D**). PO Velez then allegedly grabbed § 87(2)(b)'s arm-shoulder area, turned him around, and allegedly pushed him against the vehicle (**Allegation E**). The officer proceeded to frisk and search § 87(2)(b) against the Buick (**Allegations C and D continued**).

After the frisks and searches, § 87(2)(b) observed PO Lukeson searching his vehicle (**Allegation F**). Once PO Lukeson finished searching his car, § 87(2)(b) allegedly told PO Lukeson, "I need you guys to identify yourselves as officers. I need your information. I need to know your names." PO Lukeson did not provide his name to § 87(2)(b) (**Allegation G**). The officers got in their vehicle and drove away.

§ 87(2)(g)

## Summary of Complaint

### Statements to the CCRB

§ 87(2)(b) was interviewed in-person at the CCRB on February 19, 2009 (encl.13a-13e). At the time of the interview, § 87(2)(b) a § 87(2)(b)-old black male, § 87(2)(b)

§ 87(2)(g)

He provided the following statement to the CCRB:

On February 6, 2009, at approximately 11:10pm, § 87(2)(b) who was driving his mother's 1999 white Buick, stopped at a red light at Wilson and Willoughby Avenues in Brooklyn. § 87(2)(b)'s passengers were his fiancée, § 87(2)(b) and his two cousins, § 87(2)(b) and § 87(2)(b). § 87(2)(b) stated that § 87(2)(b) was sitting behind him, § 87(2)(b) was sitting in the passenger seat, and § 87(2)(b) was sitting behind § 87(2)(b). § 87(2)(b) observed a black Chevy Impala (license plate number § 87(2)(e), § 87(2)(b)) to the left of his vehicle. The black Impala made a left onto the street and positioned itself in front of § 87(2)(b)'s vehicle. § 87(2)(b) explained that the street was a two way street that is narrow. When the light turned green, the Impala made a U-turn onto the opposite lane of traffic.

As § 87(2)(b) was approaching the car, the driver of the Impala, a white male plainclothes officer with a pointy thick mustache and black frame glasses, later identified as PO James Lukeson from 83<sup>rd</sup> Precinct, called § 87(2)(b) a "fucking retard." § 87(2)(b) stated that his driver's side window was not rolled down, but he heard the officer call him a "fucking retard" because "I have very sharp ears." § 87(2)(b) stated that by the time the officer made the statement the Impala was in front of his car in an angle. As PO Lukeson turned the car around into the opposite direction, he looked at § 87(2)(b) and again told him,

“fucking retard.” § 87(2)(b) stated that at this point, the Impala was four feet away from his vehicle and their vehicles were close together since the street is very narrow. § 87(2)(b) stopped his vehicle and waited for the officer to pull away.

At that point, § 87(2)(b) told PO Lukeson, “Your mother is a fucking retard. Who the hell would make a retarded U-turn like that?” The officer placed his car in reverse, stopped the car, and opened the door onto § 87(2)(b) s drivers’ side door. § 87(2)(b) stated that the cars were not exactly parallel to each other because when the officer opened the door to his car it was “slightly off” from completely blocking § 87(2)(b) s door. § 87(2)(b) stated that there was enough room for the officer to stand but not for him to exit. PO Lukeson then closed his door enough for him to reach inside § 87(2)(b) s vehicle, grabbed his shirt collar, and asked him, “My mother? My mother?” § 87(2)(b) told the officer, “Yes.” After PO Lukeson asked § 87(2)(b) the question a third time, a Hispanic or Italian male plainclothes officer, later identified as PO Javier Velez from the 83<sup>rd</sup> Precinct, turned on the turret lights and exited the vehicle.

When § 87(2)(b) saw the lights, he asked PO Lukeson, “Are you a cop? You never identified yourself as a cop. For that, you have to excuse me, if I would have known you would have been a cop I would have never said that.” PO Lukeson instructed the group, “All you guys get out of the car right now.” PO Velez also instructed the group to exit the vehicle. PO Velez asked § 87(2)(b) to exit the vehicle. Later in the interview, § 87(2)(b) stated that PO Velez was screaming at § 87(2)(b) to exit the vehicle. PO Velez then grabbed § 87(2)(b) and took him out of the car. § 87(2)(b) stated that he did not think § 87(2)(b) had the car door open. PO Velez then yelled at § 87(2)(b) to exit the vehicle. § 87(2)(b) assumed that § 87(2)(b) did not hear him because PO Velez yelled the instruction repeatedly. § 87(2)(b) told PO Velez that § 87(2)(b) was a minor. PO Velez stated, “I don’t care what he is. He has to get out of the car too. I want him out of the car now.”

§ 87(2)(b) exited the vehicle and turned around to face the roof of his car. At that point, PO Lukeson proceeded to frisk and search him. § 87(2)(b) stated that he was wearing a pair of jeans, a collared shirt, and his coat. PO Lukeson placed his hands inside § 87(2)(b) s two front jeans pockets, patted his two back jean pockets, and grabbed his two coat pockets. PO Lukeson took § 87(2)(b) s ID, cash, and inhaler from his pockets. PO Lukeson then placed everything back inside his pockets and handed § 87(2)(b) s identification to an older Italian male plainclothes officer with grey hair and thick goatee, later identified as Sgt. Gary Calhoun from the 83<sup>rd</sup> Precinct. § 87(2)(b) stated that none of the officers ran his information or returned to their vehicle. PO Lukeson instructed § 87(2)(b) to move to the back of his vehicle.

Once § 87(2)(b) and § 87(2)(b) were out of the vehicle, they remained standing by the passenger side of § 87(2)(b) s car. § 87(2)(b) stated that the officers roughly slammed § 87(2)(b) against the back of his vehicle. § 87(2)(b) was frisked by PO Lukeson and § 87(2)(b) was frisked by PO Velez. PO Lukeson placed his hand inside § 87(2)(b) s pockets because he removed a small box cutter from his hoodie pocket. PO Lukeson told § 87(2)(b) “You know you could get arrested for this? I can take you to jail right now.” § 87(2)(b) told the officer, “No, you can’t. It’s a box cutter. I was helping someone move.” The officer then threw the box cutter in the car. After § 87(2)(b) was frisked, § 87(2)(b) saw PO Lukeson searching the passenger side and back seat of his car. § 87(2)(b) stated that PO Lukeson did not go to the driver’s side of his vehicle. During this time, § 87(2)(b) was still sitting inside the car.

PO Lukeson and PO Velez then asked § 87(2)(b) “Where are you guys from? You have guns and drugs in here?” § 87(2)(b) told the officers that he is from Coram. The officers told the group, “You guys are in Brooklyn now.” § 87(2)(b) told PO Lukeson, “I’m in Brooklyn now, we established that. Is there a procedure that Brooklyn officers follow that other cops follow? Can you identify yourself? You had taken my identification out of my pocket. Now, I want to know who you guys are.” § 87(2)(b) got no response. Sgt. Calhoun removed his badge from his shirt, but § 87(2)(b) did not recall the badge number.

At the back of his vehicle, § 87(2)(b) told PO Lukeson that he was not going to deal with him any further. PO Lukeson walked over to § 87(2)(b) s car, opened the door, and told § 87(2)(b) to exit the vehicle. § 87(2)(b) did not exit the car. Sgt. Calhoun told PO Lukeson to forget it because they were leaving. As PO Lukeson was getting inside the Impala, § 87(2)(b) said, “I need you guys to identify yourself as officers. I need your information. I need to know your names.” § 87(2)(b) stated that he did

not ask PO Velez or Sgt. Calhoun directly for their identification, but did ask PO Lukeson directly. The officers left the location without placing anyone under arrest or issuing anyone a summons.

#### Photo Array Viewing

On April 2, 2009, § 87(2)(b) was shown sixteen single officer photographs (encl. 17a-17s). § 87(2)(b) identified a filler photograph and wrote underneath his picture, "Mediator." He also identified the photograph of PO Stephen Dimario and wrote underneath his photograph, "I believe this is officer number one (referring to the driver of the police vehicle)."

### Results of Investigation

#### Victim Statements

§ 87(2)(b) § 87(2)(b)

§ 87(2)(b) was interviewed in-person at the CCRB on February 19, 2009 (encl. 14a-14d). At the time of the interview, § 87(2)(b) a § 87(2)(b) -old black male, § 87(2)(b) He provided the following statement to the CCRB:

§ 87(2)(g)

§ 87(2)(b) PO Lukeson began to tug on § 87(2)(b)'s door, told him to unlock it, and to exit the car. § 87(2)(b) opened the door and told PO Lukeson, "I didn't know you where an officer of the law. I apologized." PO Lukeson stated, "Yeah, I bet you do," and pulled him out of the vehicle. During this time, everyone else remained inside the vehicle. § 87(2)(b) got out of the vehicle and asked PO Lukeson for his name and badge number. PO Lukeson ignored § 87(2)(b) and did not provide his information. PO Lukeson searched § 87(2)(b) by the driver's side door and took him to the back of his vehicle. § 87(2)(b) did not see PO Lukeson place his hands inside § 87(2)(b)'s pockets because PO Velez opened his door and told him to get out of the car. PO Velez told him three times to exit the vehicle.

PO Velez told § 87(2)(b) to place his hands on the car, searched him, and placed his hands inside his four pockets. § 87(2)(b) was wearing blue sweatpants, blue hoodie, and black sneakers. During this time, § 87(2)(b) was at the back of his vehicle. § 87(2)(b) did not say anything to the officers, but § 87(2)(b) told the officer that he was a minor and he is from Long Island. After the search, PO Velez told § 87(2)(b) to go to the back of the car and took § 87(2)(b) out of the vehicle. Later in the interview, § 87(2)(b) stated that PO Velez opened § 87(2)(b)'s door and waved him out of the vehicle. At that point, § 87(2)(b) stepped out of the car.

Once § 87(2)(b) was out of the car, PO Velez searched him and found a blue box cutter in his back jean pocket. PO Velez told § 87(2)(b) "You could go to jail for this." PO Velez closed it and threw it in the back of the car. PO Velez then sent § 87(2)(b) to the back of the car. PO Lukeson and PO Velez proceeded to search the front of § 87(2)(b)'s car. § 87(2)(b) saw PO Velez leaning into the passenger seat of the car.

#### Photo Array Viewing

On April 15, 2009, § 87(2)(b) was shown sixteen single officer photographs (encl. 18a-18s). § 87(2)(b) identified the photograph of Sgt. Gary Calhoun from the 83<sup>rd</sup> Precinct and wrote underneath his picture, "Lets (sic) us go." He also identified the photograph of PO James Lukeson from the 83<sup>rd</sup> Precinct and wrote underneath his picture, "Driver." § 87(2)(b) also identified the photograph of PO Javier Velez from the 83<sup>rd</sup> Precinct and wrote underneath his picture, "Came to my door. Said step out."

§ 87(2)(b)

§ 87(2)(b) provided an in-person statement to the CCRB on March 20, 2009 (encl. 15a-15s).

§ 87(2)(b)

She stated the following:

§ 87(2)(g)

§ 87(2)(b). As the Impala drove on the opposite lane of traffic, the driver of the Impala yelled out toward § 87(2)(b) "stupid retard." Later, she stated that the driver called § 87(2)(b) a "fucking retard." When § 87(2)(b) stated, "Your mother," the vehicle stopped and reversed and stopped traffic. At that point, PO Lukeson, PO Velez, and Sgt. Calhoun exited the vehicle. PO Lukeson told § 87(2)(b)

§ 87(2)(b) to exit the vehicle and § 87(2)(b) complied. PO Lukeson proceeded to instruct § 87(2)(b) to place his hands on the roof of the car and patted him down by the rear driver's side door. § 87(2)(b) stated that she believed PO Lukeson frisked § 87(2)(b) and did not place his hands inside § 87(2)(b) pockets. During this time, § 87(2)(b) was inside the vehicle.

PO Velez told § 87(2)(b) to exit the vehicle. § 87(2)(b) told the officer that § 87(2)(b) was only § 87(2)(b)-years-old. PO Velez told § 87(2)(b) "I don't give a fuck. This is not Long Island." § 87(2)(b) exited the vehicle and PO Velez patted him down by the passenger side door. During this time, § 87(2)(b) was inside the vehicle. After § 87(2)(b) was frisked, PO Velez told § 87(2)(b) to exit the vehicle. Once § 87(2)(b) was outside the vehicle, he was upset and told the officer, "This is not right." § 87(2)(b) was also patted down by the rear passenger side door and § 87(2)(b) stated that an officer placed his hands inside § 87(2)(b) pockets and removed a small pocket knife. However, § 87(2)(b) was not sure which officer did this. During this time, § 87(2)(b) was inside the vehicle looking straight ahead. § 87(2)(b) exited the vehicle, but § 87(2)(b) told the officers that § 87(2)(b) was nine months pregnant. § 87(2)(b) was told to re-enter the vehicle. Once § 87(2)(b) was inside the vehicle, the officers told the men to get in the vehicle and go home.

#### Photo Array Viewing

After § 87(2)(b) provided her in-person statement, the undersigned showed her sixteen single officer photographs. She wrote underneath PO James Lukeson's photograph, "I believe this is the driver of the vehicle." She also wrote underneath the filler photograph, "I believe this may have been the 3<sup>rd</sup> officer in the vehicle." § 87(2)(b) also wrote underneath PO Kenneth Dwyer's photo, "I believe this might be one of the officers in question."

§ 87(2)(b)  
§ 87(2)(b) provided an in-person statement to the CCRB on April 2, 2009 (encl. 16a-16s). At the time of the interview, § 87(2)(b) a § 87(2)(b) black male, § 87(2)(b)  
He stated the following:

§ 87(2)(g)  
§ 87(2)(b) did not recall the curse words that the officer used. PO Lukeson yelled out of the window and told § 87(2)(b) to stop the car. Once § 87(2)(b) complied, PO Lukeson jumped out of the Impala and hit § 87(2)(b)'s driver's side door and told everyone in § 87(2)(b)'s car to get out of the vehicle. PO Lukeson opened § 87(2)(b)'s door as PO Velez opened § 87(2)(b)'s door and instructed him to exit the vehicle. § 87(2)(b) complied and exited the vehicle.

As § 87(2)(b) stood outside the vehicle by the passenger side door, PO Velez started to search him. Later in the interview, § 87(2)(b) stated that he did not see PO Velez place his hands inside § 87(2)(b)'s pockets because he was not "paying attention" and mentioned that he saw PO Velez pat § 87(2)(b) down. During this time, § 87(2)(b) was still inside the vehicle. § 87(2)(b) told the officer that § 87(2)(b) was only § 87(2)(b) old and the officer proceeded to yell at § 87(2)(b) saying that he did not care and ordered § 87(2)(b) out of the vehicle. This officer proceeded to "curse me out," but § 87(2)(b) could not state what the officer told him.

Once § 87(2)(b) exited the vehicle, PO Velez grabbed § 87(2)(b) arm-shoulder areas, turned him around, and "aggressively" pushed him. Only § 87(2)(b) shoulders made contact with the car and he received no injuries. § 87(2)(b) stated that he did not recall if the officer said anything to him before he was pushed. PO Velez proceeded to pat § 87(2)(b) down and search him. § 87(2)(b) stated that the officer placed his hands inside the two front pockets of his jeans, in his hoodie pocket, and the two outer pockets of his jacket. PO Velez removed a box cutter from § 87(2)(b) hoodie pocket and told him that he was going to lock him up for it. At that point, Sgt. Calhoun told PO Velez, "Leave him alone." During this time, § 87(2)(b) did not recall what was happening with § 87(2)(b). He stated that § 87(2)(b) was still sitting in the vehicle and § 87(2)(b) was leaning on the passenger door of the vehicle standing next to § 87(2)(b). PO Velez then threw the box cutter in the car.

#### Photo Array Viewing

After his in-person statement, the undersigned presented § 87(2)(b) with sixteen single officer photographs. He identified the photograph of PO Javier Velez as the short Hispanic male plainclothes officer who pushed him. He also identified a filler photograph as the heavy-set Italian male plainclothes officer and wrote underneath his picture, "Officer that gave his two partners the word to let us go."

#### Officer Statements

##### **Sgt. Gary Calhoun**

Sgt. Gary Calhoun provided a statement to the CCRB on June 11, 2009 (encl. 21a-21b). On February 6, 2009, Sgt. Calhoun, a § 87(2)(b)-old white male is 5'10" and weighs 220 pounds, worked in plainclothes with PO James Lukeson and PO Javier Velez in a black unmarked vehicle. The sergeant was assigned to the 83<sup>rd</sup> Precinct anti-crime unit and had no memo book entries regarding the incident (encl. 20a-20b).

#### CCRB Statement

Sgt. Calhoun did not recall any incident that took place on February 6, 2009 and did not recall stopping a white Buick with four individuals inside the car. The sergeant had no memo book entries around 11:10pm. He did not recall if he was in the area of Wilson and Willoughby Avenues at that time and mentioned that the location is an area he would normally patrol. The sergeant did not know what time he took meal and did not recall if he issued any summonses or arrested anyone at approximately 11:10pm. Sgt. Calhoun did not recognize the photographs of § 87(2)(b) and § 87(2)(b).

##### **PO James Lukeson**

PO James Lukeson provided a statement to the CCRB on June 11, 2009 (encl. 23a-23b). On February 6, 2009, PO Lukeson, a § 87(2)(b)-old white male is 5'11" and weighs 210 pounds, worked in plainclothes with Sgt. Gary Calhoun and PO Javier Velez in a blue Chevy Impala. The officer was assigned to the 83<sup>rd</sup> Precinct anti-crime unit and had no memo book entries regarding the incident (encl. 22a-22b).

#### CCRB Statement

§ 87(2)(f)

PO Lukeson recalled making car stops on February 6, 2009, but did not recall stopping a white Buick. The officer stated that he patrolled the area of Wilson and Willoughby Avenues in Brooklyn, but did not recall making any car stops in that area.

##### **PO Kenneth Dwyer**

PO Kenneth Dwyer provided a statement on June 11, 2009 (encl. 25a-25b). On February 6, 2009, PO Dwyer, a § 87(2)(b)-old white male is 6'3" and weighs 265 pounds, worked in plainclothes with PO Michael Buglione and was assigned to the 83<sup>rd</sup> Precinct anti-crime unit. The officer stated that he did not recall the make or color of his unmarked vehicle. PO Dwyer had no memo book entries regarding the incident (encl. 24a-24b).

#### CCRB Statement

PO Kenneth Dwyer's statement is consistent with the statements of Sgt. Gary Calhoun and PO James Lukeson.

##### **PO Javier Velez**

PO Javier Velez provided a statement to the CCRB on July 16, 2009 (encl. 27a-27b). On February 6, 2009, PO Velez, a § 87(2)(b)-old Hispanic male is 5'9" and weighs 190 pounds, worked in plainclothes and was assigned to the 83<sup>rd</sup> Precinct anti-crime unit. The officer stated that he did not recall who he worked with and did not recall the description of the vehicle he was assigned to that day. PO Velez had no memo book entries regarding the incident (encl. 26a-26c).

#### CCRB Statement

§ 87(2)(g)

At approximately 10:50pm, PO Velez had an entry in his memo book regarding a car stop at the corner of Schaefer Street and Central Avenue in Brooklyn. PO Velez stated that Willoughby Avenue and Wilson Avenue is located on the other side of the confines of the

83<sup>rd</sup> Precinct and was not close to his location. PO Velez conducted the car stop for approximately five minutes and stated that he did not issue anyone any summons or place anyone under arrest.

#### Officers Not Interviewed

Though § 87(2)(b) identified PO Stephen Dimario's photograph from the photo array as possibly being the driver of the Chevy Impala, the officer was not interviewed since it was noted in his memo book that he began his tour at 11:15pm on February 6, 2009 (encl. 28a-28b). § 87(2)(g)

#### MISD

According to the MISD documents, there was no warrant checks performed on § 87(2)(b)'s license (encl. 30a-30c).

#### Stop, Question, and Frisk Log

The stop, question, and frisk log had no results for § 87(2)(b) or § 87(2)(b) (encl. 31a-31b).

#### Roll Call

Sgt. Calhoun, PO Lukeson, and PO Velez were assigned to the anti-crime unit in vehicle number § 87(2)(b) (encl. 29a-29b).

#### Fleet Services Database

According to the Internal Affairs Bureau, vehicle number § 87(2)(b) is a black Chevy Impala with license plate number § 87(2)(e), § 87(2)(b) (encl. 35a).

#### CCRB History

§ 87(2)(b) and § 87(2)(b) have not filed any prior CCRB complaints. PO James Lukeson, a five-year veteran of the NYPD, has had one substantiated CCRB complaint in case number 200716565. PO Lukeson received a command B discipline for stopping, questioning, and searching § 87(2)(b). Sgt. Gary Calhoun, a sixteen-year veteran of the NYPD, has had two substantiated CCRB complaints in case numbers 9700541 and 9802616. Sgt. Calhoun received a thirty day suspension in CCRB case number 9700541. Regarding CCRB case number 9802616, the NYPD dismissed the charges. PO Javier Velez, a five-year veteran of the NYPD, has had no substantiated CCRB complaints.

#### Criminal Conviction History

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### Conclusions and Recommendations

#### Officer Identification

§ 87(2)(b) testified that he observed the license plate of the unmarked police vehicle as § 87(2)(e), § 87(2)(b). According to the Internal Affairs Bureau, a vehicle with license plate number § 87(2)(e), § 87(2)(b) was assigned to the 83<sup>rd</sup> Precinct. Based on the roll call, Sgt. Calhoun, PO Lukeson, and PO Velez were assigned to that vehicle. On March 20, April 2, and April 15, 2009, the undersigned presented § 87(2)(b) and § 87(2)(b) with photographs of officers assigned to the 83<sup>rd</sup> Precinct anti-crime unit tour 3. § 87(2)(g)

§ 87(2)(b) identified Sgt. Calhoun as the officer who released them. Sgt. Calhoun's physical description matches that provided by § 87(2)(b) and § 87(2)(b) as the older heavy-set Italian male officer with gray hair. § 87(2)(g)

§ 87(2)(b) also identified PO Velez as the officer who instructed him to exit the car and who searched him. § 87(2)(b) also identified PO Velez as the officer who pushed him against the vehicle. § 87(2)(g)

§ 87(2)(g)

#### Allegation Not Pled

§ 87(2)(b) alleged that PO Lukeson told § 87(2)(b) “I don’t give a fuck. This is not Long Island.” Though § 87(2)(b) testified that an officer “cursed him out”, he could not articulate what the officer said to him. § 87(2)(g)

#### Facts in Dispute

§ 87(2)(g)

#### Assessment of Evidence

§ 87(2)(g)

§ 87(2)(g)

**Allegation A: PO James Lukeson spoke obscenely and/or rudely to § 87(2)(b)**

**Allegation G: PO James Lukeson refused to provide his name to § 87(2)(b)**

§ 87(2)(b) alleged that PO Lukeson called him a “fucking retard” and refused to provide him with his name. § 87(2)(g)

§ 87(2)(b) According to NYPD Patrol Guide procedure 203-09, an officer is required to “courteously and clearly state your rank, name, shield number and command, or otherwise provide them, to anyone who requests you to do so” (encl.1a). § 87(2)(g)

**Allegation B: Sgt. Gary Calhoun supervised the vehicle stop in which § 87(2)(b)**

**and § 87(2)(b) were occupants.**

**Allegation C: Sgt. Gary Calhoun supervised the frisk of § 87(2)(b) and § 87(2)(b)**

**Allegation D: Sgt. Gary Calhoun supervised the search of § 87(2)(b) and § 87(2)(b)**

**Allegation F: Sgt. Gary Calhoun supervised the search of the car in which § 87(2)(b) was an occupant.**

§ 87(2)(g)

§ 87(2)(b) According to Kamins, “the Court of Appeals held that an automobile stop is lawful when an officer has probable cause to believe that an individual has violated the Vehicle and Traffic Law” (encl.2a).



§ 87(2)(g)

§ 87(2)(g)

██████████ New York City Police Patrol Guide Procedure 212-11 states, “when a uniformed member of the service reasonably suspects a person has committed, is committing or is about to commit a felony or a Penal Law misdemeanor, frisk, if you reasonably suspect you or others are in danger of physical injury and search, if frisk reseals [sic] object which may be a weapon” (encl.3a-3c). § 87(2)(g)

§ 87(2)(g)

██████████ Kamins explains that an officer “may search a vehicle and any containers found inside when they have probable cause to believe that it contains contraband, a weapon, or evidence of a crime” (encl.4a) § 87(2)(g)

**Allegation E: PO Javier Velez used physical force against** § 87(2)(b)

██████████ testified that PO Velez grabbed his arm-shoulder area, turned him around, and pushed him against the vehicle before he was frisk and search. § 87(2)(b) did not mention that he resisted or made any gestures toward the officer that would warrant PO Velez to push him. According to NYPD Patrol Guide Procedure 203-11, “all uniformed members of the service are responsible and accountable for the proper use of force under appropriate circumstances” (encl.5a-5b) § 87(2)(g)

Investigator:  
Jacqueline Asencio  
Supervisor:  
Reviewed by:  
Reviewed by:

Date:  
Date:  
Date:  
Date: